

REMARKS

The foregoing amendment corrects the inadvertent omission of “and” in the components comprising the composition claimed in Claim 77.

All of the remaining claims in this application continue to be rejected as obvious over an article by H. Leirs et al relating to fipronil as a systemic insecticide in a bromadiolone rodenticide bait (“Leirs”), in view of an article by Claudio Petterino relating to the toxicology of various anticoagulant rodenticides (“Petterino”) and Jeannin et al U.S. Patent No. 6,162,820 (“Jeannin”). This rejection is respectfully traversed.

Leirs, the primary reference, is concerned with rodenticidal bait composition comprising bromadiolone as the active rodenticide and fipronil as a systemic insecticide. Specifically, the data reported deal with the rodent species roof rat (*Rattus rattus*) and a species of rat flea (*Xenopsylla cheopsis*), and these data focus particularly on palatability of the bait compositions. The general conclusion reached by the authors was that the palatability of the tested compositions was unsatisfactory and, therefore, regardless of whether or not the compositions contained fipronil as a systemic insecticide, the compositions were not sufficiently palatable to rats to constitute an effective rodenticidal bait composition.

The mortality of the rats was generally lower in the experimental group than in the control group. The total bait consumption (treated + untreated baits) was not different between the groups, but the relative amount eaten of the treated baits was slightly higher in the control group. The test bait acceptance often remained under 20%, also in the control groups. This 20% level is used at the Danish Pest Infestation laboratory as a standard for practical efficacy of a rodenticide.

Page 301, right column. Further along:

Therefore, the rather poor palatability of the bait base used here, even in the absence of fipronil, certainly needs to be improved before a bait can be used successfully in practice.

Page 302, left column.

The rejection made by the Examiner is under 35 U.S.C. § 103(a) which requires that the subject matter of the invention be obvious to “a person having ordinary skill in the art”. A person skilled in the art would take away from the Leirs disclosure the fact that, in order for bromadiolone composition fipronil insecticide to be effective as a rodenticide, the palatability of the composition would have to be improved. Thus, what requires improvement is the various additives in the composition, not a change in the rodenticide. There is no teaching or suggestion in Leirs that another rodenticide should be used in place of bromadiolone.

The Examiner acknowledges that, in Leirs (the primary reference) the only disclosed rodenticide is bromadiolone and therefore turns to the Petterino reference as a cure for the “deficiency in the teaching of Leirs”. The Petterino article discusses the toxicology and mechanism of action for the various anticoagulant rodenticides and there are data showing the toxicology of certain rodenticides to various other animal species. Petterino may suggest the use of a rodenticide of higher lethality as an expedient, but this does not remedy the alleged “deficiency” in the Leirs’ article. Leirs is concerned with palatability of compositions comprising bromadiolone; it does not consider the effectiveness of bromadiolone as a rodenticide. Petterino addresses a problem that is of no concern to Leirs. Leirs addresses a problem that is of no concern to Petterino. These two references are not properly combinable to support a rejection under 35 U.S.C. § 103.

The third reference cited by the examiner, Jeannin, relates only to the use of fipronil as a systemic insecticide/acaricide. The reference does not disclose the possibility of combining fipronil, or any other similar agent, with a rodenticide. Therefore, the disclosure of Jeannin adds nothing which would be useful in supporting a rejection under 35 U.S.C. § 103.

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Page : 12 of 12

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CONCLUSION

In view of the foregoing remarks, it is believed that all claims remaining in this application are in condition for allowance. Favorable action is therefore requested.

Please apply any other charges or credits to deposit account 06-1050, referencing the attorney docket number above.

Respectfully submitted,

Date: 1 August 2011

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